

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

**IN RE: TESTOSTERONE
REPLACEMENT THERAPY
PRODUCTS LIABILITY LITIGATION**

:
: **Civil Action No. 1:14-MD-01748**
: **MDL NO. 2545**
:
: **JUDGE MATTHEW F. KENNELLY**
:

This document relates to:

:
: *Dick Bechtholdt v. AbbVie Inc.*,
: Case No. 15-cv-09652
: *George Kibat v. AbbVie Inc.*,
: Case No. 15-cv-08820
: *Gordon Abraham, et al. v. AbbVie Inc.*,
: Case No. 15-cv-05009
: *Edwin Clay Harris v. AbbVie Inc.*,
: Case No. 14-cv-07963
: *Edward Natale, Jr. v. AbbVie Inc.*,
: Case No. 16-cv-05706
: *Dominick Papandrea et al. v. AbbVie Inc.*,
: Case No. 14-cv-08948
:

**PLAINTIFFS' STEERING COMMITTEE'S RESPONSE TO ABBVIE DEFENDANTS'
SUBMISSION REGARDING TRIAL GROUP ONE CASES**

The Plaintiffs' Steering Committee ("PSC") respectfully submits this response to AbbVie's Submission Regarding Trial Group One Cases pursuant to CMO 87 Section III(A). Dkt. No. 2709. As set forth below, it is the PSC's understanding that any submissions pursuant to CMO 87 Section III(A), which provided for "submissions by the parties describing the cases and why they should or should not be tried and in what sequence" are moot because of the Court's subsequent relevant Case Management Orders, including specifically CMO 108 and CMO 114.

Indeed, AbbVie acknowledges that its own submission is moot, stating that since CMO 87 was entered, "the Court has further explained that all of the cases being worked up are subject to

possible selection for trial in light of the availability of other Judges from within the U.S. District Court for the Northern District of Illinois.” *See* AbbVie’s Submission, Dkt. No. 2709 at 1.

When CMO 87 (Dkt. No. 2298) was entered on December 11, 2017, the Court included Section III(A), “Trial Selection,” as a provision that gave the parties an opportunity to file submissions regarding “which cases will be tried and in what sequence.” As conceded in AbbVie’s Submission,¹ the Court’s position has changed and now all Trial Group 1 Cases will be tried. Pursuant to CMO 108 (Doc. 2410), all Trial Group 1 cases have Court Ordered identical pre-trial schedules, including motions *in limine* due on August 22, 2018. Additionally, pursuant to CMO 114, the Court has activated other Judges in the Northern District of Illinois to try these cases and each Trial Group 1 case will have a trial date within four (4) weeks of one another. Accordingly, any submission that would have been contemplated under CMO 87 Section III(A) has since become unnecessary with the Court’s more recent Case Management Orders. Because the issues of selecting cases for trial and the sequence in which they are tried have become unnecessary, nothing was required to be filed or submitted today.

Further, AbbVie’s submission is beyond the purview of what the Court originally called for in contemplating submissions under CMO 87 Section III(A). Specifically, the Court stated it would consider “submissions by the parties describing the cases and why they should or should not be tried and in what sequence.” Again, this is moot since sequencing is not needed. AbbVie’s submission is merely an overview of each Trial Group 1 case painted from AbbVie’s perspective and rife with factual misstatements regarding the Plaintiffs. Additionally, AbbVie includes their choice of state law opinion which is premature and should be the subject of subsequent motion practice.

The PSC submits that AbbVie’s submission should be disregarded, stricken from the record, and/or the PSC should be given an opportunity to provide a more accurate statement of facts and

¹ “AbbVie recognizes that recent events may impact that original plan.” *See* AbbVie’s Submission, Dkt. No. 2709 at 6.

overview, including the respective plaintiffs' choice of law assessments, if in fact the Court wishes to take these considerations under advisement at this time.

For the foregoing reasons, the PSC respectfully requests that the Court strike AbbVie's submission or in the alternative permit the PSC one week to respond to AbbVie's submission and address the facts and overview of the cases.

Dated: June 7, 2018

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 7, 2018, I electronically transmitted the foregoing document to the Clerk of the United States District Court using the CM/ECF system for filing and service to all parties/counsel registered to received copies in this case.

/s/ Brendan A. Smith

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